

Deposition of PMK--Pinoleville Pomo Nation Environmental Association

April 7, 2008

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 ---oOo---
4 PINOLEVILLE POMO NATION,
5 et al.,
6 Plaintiffs,
7 vs. Case No. C-07-2648 SI
8 UKIAH AUTO DISMANTLERS,
9 et al.,
10 Defendants.

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 Deposition of Person Most
13 Knowledgeable--Pinoleville
14 Pomo Nation Environmental Association

15 Monday, April 7, 2008

16 Reported by:

17 LUEL J. SIMSON, CSR No. 4720

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1 BE IT REMEMBERED THAT, pursuant to Notice of
2 Taking Deposition of Person Most Knowledgeable and Demand
3 for Documents, on Monday, April 7, 2008, commencing at the
4 hour of 11:06 a.m., thereof, at the Law Offices of
5 CHRISTOPHER J. NEARY, 110 South Main Street, Suite C,
6 Willits, California, before me, LUEL J. SIMSON, CSR
7 No. 4720, State of California, the following proceedings
8 were had:

9 ---oOo---

10
11 APPEARANCES

12 For the Plaintiffs:

13 BIGGS LAW, PC
14 Post Office Box 454
15 Petaluma, California 94953
16 By: MICHAEL S. BIGGS, Esq.

17 For the Defendant, UKIAH AUTO DISMANTLERS, WAYNE HUNT and
18 U.S. ALCHEMY CORPORATION:

19 Law Offices of CHRISTOPHER J. NEARY
20 110 South Main Street, Suite C
21 Willits, California 95490
22 By: CHRISTOPHER J. NEARY, Esq.

23 For the Defendant, RICHARD MAYFIELD:

24 Law Offices of HANS W. HERB
25 Post Office Box 970
Santa Rosa, California 95402
By: HANS W. HERB, Esq.

2

1 PROCEEDINGS
2 (11:06 a.m.)

3 Also Present: MARCY BARRY

4 DAVID EDMUNDS

5 WAYNE HUNT

6 RYAN MAYFIELD

7 GEORGE PROVENCHER

8 LEONA WILLIAMS

9 ---oOo---

10 MR. BIGGS: We've brought our real parties. We
11 have 30 people here.

12 MR. NEARY: Have a seat here.

13 MR. BIGGS: This is Chairperson Leona Williams;
14 this is Dr. Edmunds, who is in charge of the Environmental
15 Association; this is the Director of Tribal Operations,
16 Mr. Provencher.

17 And the person most -- one of the elements under
18 the Clean Water Act and RCRA --

19 MR. NEARY: Why don't you just have a seat here
20 and --

21 MR. BIGGS: Everybody wants to speak today.

22 MR. NEARY: Okay. Well, there's -- let's just
23 have a seat and we'll figure out what we're going to do
24 here.

25 So let's go on the record. It's about 11:10 --
are you going to have a seat?

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<p>1 And this is your deposition, but would I suggest 2 we identify the identities of the persons most 3 knowledgeable. 4 MR. HERB: Who is the first deponent, then? 5 MR. BIGGS: The first deponent would be 6 Dr. Edmunds, who is sitting on your left. 7 MR. HERB: I've never taken multiple depositions 8 of a person at one time. I'm not sure how, logistically, 9 you would do that. 10 MR. BIGGS: Perhaps I could throw out an idea. I 11 imagine you're looking for elements of standing with regard 12 to the Environmental Association, and there are many 13 different things. 14 One item that comes up is culture, and there are 15 individuals here who will speak to cultural elements. 16 There are quite a few people that have unique stories going 17 back a long time about things that the Pomo people did on 18 the reservation that they no longer can do. Natural 19 plants. Just a lot of stuff. 20 So different people will speak to different 21 cultural elements. 22 Mr. Edmunds, he will speak to elements of the 23 Association. You may have questions about who is in it and 24 how it works. I think he brought you some documents. 25 And then the entire Pinoleville Pomo Nation is the</p> <p align="right">5</p>	<p>1 that. And what I'd like -- maybe we could have everybody 2 come in and people could sit on the floor in the hallway 3 and then we keep three people in here at a time. 4 And there are certain people that I have in mind 5 who will speak to economic integrity, cultural, recreation, 6 and that sort of thing. And we could keep three people in 7 this room at a time. 8 But I would like the rest of the people to be in 9 here. I think things could be kept very orderly. 10 MR. NEARY: Let's have you designate who the 11 person most knowledgeable is, first. 12 MR. BIGGS: Well, there's about 20 people -- 13 there's probably 20 people who are most knowledgeable. 14 There's no one thing. 15 Like, for example, one person would talk about the 16 native plant garden -- 17 MR. NEARY: I don't care -- 18 MR. BIGGS: -- another person -- 19 MR. NEARY: You can have 150 people, if you want, 20 but I think you need to identify who they are and to what 21 topics they're most knowledgeable on and -- 22 MR. BIGGS: Well, we need to bring them in here. 23 MR. NEARY: This is something that you should 24 designate for the record before we get started. 25 MR. BIGGS: Well, I think, as he asks questions,</p> <p align="right">7</p>
<p>1 plaintiff as well as the Environmental Association, and 2 each party, in essence, is a plaintiff and wants to 3 participate in the deposition. Just as your clients are 4 all here, well, our clients are all here, and they all want 5 to sit. And maybe we could -- there's another place we 6 could go where there would be more room, but -- or have 7 them -- they could just -- you know, people can stand and 8 sit on the floor. But I would like them all to come in 9 here, and they all want to, and they're all asserting that 10 right. 11 MR. NEARY: Well, we might have to call the judge. 12 Because <u>we don't have room for 30 people here</u>, and this is 13 a deposition of the person most knowledgeable. If you want 14 to -- if there's time, if we're going to have -- it's your 15 deposition, but I would suggest that we identify who is 16 present first and -- because I think it's your job to 17 designate who is the person most knowledgeable. 18 <u>It could be multiple persons, but I think you need</u> 19 <u>to identify the person most knowledgeable as to standing,</u> 20 <u>the person most knowledgeable as to the allegations in the</u> 21 <u>Complaint.</u> So it's not -- we're not talking about -- you 22 don't need to bring everybody who has standing. You need 23 to designate the person who is most knowledgeable. That's 24 what I want to hear, is who that is. 25 MR. BIGGS: That's a good idea, and we can do</p> <p align="right">6</p>	<p>1 what I will do is I will say, "Who wants to speak about 2 this?" or "Who wants to speak about that?" 3 MR. NEARY: No. I mean, you know that the 4 designation is -- the topics that are going to be deposed 5 on are disclosed in the Deposition Notice. So I think, 6 first, we need to have you designate who the person most 7 knowledgeable is. 8 MR. BIGGS: Well, I need to speak with them. 9 MR. NEARY: Well, okay. Usually you do that 10 before the deposition commences. 11 MR. BIGGS: Okay. Well, we have -- 12 MR. NEARY: Do you need some more time to -- 13 MR. BIGGS: Well, let's get a copy of the 14 Deposition Notice out and see what it says. 15 MR. HERB: I have a copy. 16 MR. BIGGS: Okay. It says,<u>"will take the</u> 17 <u>deposition of the person most knowledgeable or qualified at</u> 18 <u>Pinoleville Pomo Nation Environmental Association."</u> 19 <u>There is no one, two or even three people who are</u> 20 <u>most knowledgeable. There is no one person that can hit all</u> 21 <u>of the elements. There's so many different factors here.</u> 22 <u>It's literally overwhelming.</u> 23 We have people who will speak about historical 24 sites, we'll have people who will speak about sacred sites. 25 As you know, there's Federal and State laws that have to do</p> <p align="right">8</p>

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<p>1 with the preservation of Native American sites. 2 There's some people that know about some of those 3 things but they don't know anything about the native 4 plants, for instance. Other people want to speak about 5 fishing, the steelhead that used to be in the stream. 6 Other people want to speak about how, when you go 7 downstream from UAD, it's basically dead; and then when you 8 go upstream, it's alive. 9 It just goes on and on and on. These -- 10 MR. NEARY: What you need to do is to designate 11 who those people are right now for the record, and then 12 we'll determine which order we -- 13 MR. BIGGS: Let's see what questions you're going 14 to ask. I don't know what questions, so I never got -- all 15 this says is that you want to speak with the person most 16 knowledgeable, but I don't know what the questions will be, 17 so I had to bring everybody. If you give me a list of 18 topics, I can do that. 19 MR. NEARY: Okay. The allegation of paragraph 7 20 of the Complaint is that: 21 "Plaintiff, Pinoleville Pomo Nation 22 Environmental Association, is an 23 unincorporated public interest 24 association dedicated to protecting 25 traditional Pomo lands from</p>	<p>1 domestic, recreation, drinking water, 2 sports fishing, swimming, hiking, 3 photography, nature walks and the like. 4 Furthermore, the relief sought herein 5 will redress the injury in fact, 6 likelihood of future injury and 7 interference with the interests of said 8 Plaintiffs and Plaintiffs' members." 9 So who is the person most knowledgeable as to the 10 allegations in paragraph 9? 11 MR. BIGGS: Well, there would be about 10 people. 12 And if they were right here, then I could have their names 13 go on the record and such and then they could go and sit 14 down. 15 MR. NEARY: So why don't you, so we don't have to 16 bring 30 people in -- 17 MR. BIGGS: Well, I don't think there's really 30 18 people out there. 19 How many people are out there? 20 MR. NEARY: Well, that's what you said, 21 represented. 22 MR. BIGGS: It seems like it. 23 How many are out there? 24 LEONA WILLIAMS: Maybe about 20. 25 MR. NEARY: But I think we're entitled for you to</p>
9	11
<p>1 environmental harm." 2 With an address of 500-B Pinoleville Drive, with a 3 phone number. 4 So what person is most knowledgeable to -- 5 MR. BIGGS: Okay. That would be David Edmunds. 6 And I'm okay with following your plan, I think it's a good 7 plan -- 8 MR. NEARY: Now, let's go -- 9 MR. BIGGS: -- but I want the people to come in 10 here. 11 MR. NEARY: Let's now go to paragraph 9. It says: 12 "Plaintiffs members reside in the 13 vicinity of, derive livelihoods from, 14 own property near, are employed at 15 Pinoleville Head Start Elementary 16 School, at, around and adjacent to the 17 Defendants' site. Other Plaintiffs are 18 members of the Pinoleville Pomo Nation 19 Environmental Association. Plaintiffs 20 have interests which are or may be 21 adversely affected by Defendants' 22 violations as described in this 23 Complaint. Said members use the 24 affected waters, their tributaries and 25 effected [sic] watershed areas for</p>	<p>1 designate the person most knowledgeable. It's not something 2 that's done on the fly. 3 MR. BIGGS: I don't think you've been specific in 4 your Deposition Notice. I really don't. It says, "The 5 person most knowledgeable or at Pinoleville Pomo Nation 6 Environmental Association." Well, there are people who 7 have individual experiences and such that are not common to 8 other people. So -- 9 MR. NEARY: We're not talking about have 10 evidentiary information. We're talking about the person 11 most knowledgeable. 12 MR. BIGGS: I'm aware of that. But the end 13 purpose of this is to have something on the record. For 14 example, if you were going to mount an attack on the 15 standing, the information that you would develop today 16 would go to that. So, ultimately -- 17 MR. NEARY: Well, who is the person that is most 18 knowledgeable as to standing? 19 MR. BIGGS: That would be Dr. Edmunds, David 20 Edmunds. 21 MR. NEARY: So we can -- 22 MR. BIGGS: And he's prepared to speak to that. 23 Now, here I would anticipate that Dr. Edmunds would give 24 the majority of the testimony. Okay? Again, I insist -- 25 if we cannot have our people come here, I'm going to ask</p>
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1 you to remove Mr. Hunt, his assistant, and Mr. Mayfield. 2 Absolutely. 3 These people are here. There's three of them. 4 Okay. Well, actually, we could even bring in more people 5 that are affected. Hundreds. And if we can't have our 6 people here, we're going to insist that you can't have your 7 people here. 8 They came to my office, I accommodated them. I 9 didn't know that it was -- you didn't have a larger office 10 here. We could have done this in Petaluma. We all came 11 here, we're here and that's it. Either we have our people 12 come here and sit in the hallway or your people have to 13 leave. 14 MR. NEARY: Before we talk about that, Michael, 15 let's just designate the person most knowledgeable. So if 16 Dr. Edmunds is the person most knowledgeable -- 17 MR. BIGGS: I'm not going to stipulate to that. 18 He is not the person most knowledgeable because he is not a 19 Native American. He cannot speak to the cultural elements. 20 And, as you know, there have been many cases where 21 associations have had standing or have not had standing, 22 and culture is an element of standing. 23 And, you know, I can't even speak to the culture 24 because I'm not Native American. 25 MR. NEARY: So you need to just then tell us the 13	1 Clean Water Act and RCRA. Plaintiff 2 contends there exists an injury in fact 3 to its members, causation of that 4 injury by the conduct of Defendants 5 complained of herein" -- 6 MR. BIGGS: Well, the people that are injured are 7 here -- 8 MR. NEARY: -- "and likelihood that the requested 9 relief" -- 10 MR. BIGGS: -- and they'd like to speak. 11 MR. NEARY: -- "will redress that injury." 12 So the question -- you have to designate in 13 advance who the person most knowledgeable is. If it's going 14 to be 30 people, fine. But you need to just tell us who -- 15 MR. BIGGS: Then what we need to do is form a 16 single file line in the hallway, and we'll bring one person 17 at a time and designate each person. And then they can 18 give their name, their address -- 19 MR. NEARY: I'm not looking for an identity of the 20 people that you brought with you -- 21 MR. BIGGS: Look. If you want me to designate 22 them, I need to bring them in here one at a time. Okay? 23 MR. NEARY: Why is that? Explain that. 24 MR. BIGGS: Because I can't speak to them. I need 25 to be able to get up and walk and say, "Okay. Who is going 15
1 identity of who it is that's going to speak. 2 MR. BIGGS: Well, I need to -- well, what should 3 we do here, George? 4 MR. NEARY: Well, maybe you need to confer among 5 yourselves, but you need to designate who is going to -- 6 and let's just go to the third item, which is paragraph 15. 7 "Plaintiffs and Plaintiffs' members 8 reside in the vicinity of, derive 9 livelihoods from, own property near, 10 and/or recreate on, in or near and/or 11 otherwise use, enjoy and benefit from 12 the described water bodies, their 13 tributaries, wetlands, hydro logically 14 connected water bodies and associated 15 natural resources into which the 16 Defendants discharge pollution, or by 17 which Defendants' operations adversely 18 affect those members' interests, in 19 violation of the CWA and RCRA. The 20 health, economic, recreational, 21 aesthetic and environmental interests 22 of Plaintiffs and Plaintiffs' members 23 may be, have been, are being, and will 24 continue to be adversely affected by 25 Defendants' unlawful violations of the 14	1 to speak to basket weaving?" "Who is going to speak to the 2 sweats?" "Who is going to speak to the steelhead?" Okay? 3 And then say a person says, "I will speak to 4 that," and then we'll walk that person in. 5 MR. NEARY: So you haven't talked about this in 6 advance. 7 MR. BIGGS: No; <u>we had a huge meeting Saturday.</u> 8 And, in fact, the only way to do this in organized fashion 9 is exactly how I'm proposing. We could have already been 10 through the first three or four people by now, but we're 11 not even at that point. 12 MR. NEARY: Well, I don't think you understand. 13 We'll decide the order of the people we depose -- 14 MR. BIGGS: That's fine. 15 MR. NEARY: -- as the person most knowledgeable. 16 But after you designate them. 17 MR. BIGGS: Well, what do you want to speak to 18 first? 19 MR. NEARY: Well, first, I want you to -- you know 20 what the issues are, so we need to know who the people are. 21 MR. BIGGS: I don't have everybody's name written 22 down. They're here. That's a lot more reliable than a 23 writing. You don't want them to come here. 24 MR. NEARY: No, you have to make the designation. 25 MR. BIGGS: Well, I'll designate them. 16

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1 MR. NEARY: No, we can't just bring a whole bunch 2 of -- 3 MR. BIGGS: Well, then I'll bring one person in at 4 a time. 5 MR. NEARY: One person at a time for what purpose? 6 MR. BIGGS: To designate. 7 MR. NEARY: You don't have to bring -- you don't 8 need to bring them here, you need to designate -- 9 MR. BIGGS: First of all, this isn't your 10 deposition. I want to know -- your name is not on this. 11 And, also, I want to know -- it just occurred to me. 12 He has filed a lawsuit against your client. This 13 says, "Hans Herb." At this point, you're out. This is 14 Mr. Herb's deposition, not yours. 15 MR. NEARY: It's my office. 16 MR. BIGGS: You know what? You're just 17 accommodating. And not only is this not your deposition, 18 you're not letting us bring our people in. This is 19 Mr. Herb's deposition. He's sued you. 20 This is a conflict of interest. This is in 21 violation of Rule 3-100 and has presented a conflict of 22 interest, and I think it's reportable to the State Bar. 23 Absolutely. And I'm going to direct you not to speak 24 anymore. And you have not properly noticed this. 25 MR. NEARY: Well, I'll join in --	1 interest. Okay? This is not -- these things go on in 2 Mendocino County, but I'll tell you something. This is the 3 State of California and this is the United States, and I 4 won't tolerate this. 5 This deposition is over unless Mr. Herb takes over 6 right now. I will not respond to any more questions you 7 set forth. 8 MR. NEARY: Well, Hans, I'd suggest you ask him 9 who he's going to designate as the person most 10 knowledgeable. 11 MR. HERB: Well, I think, until we get this issue 12 of the office worked out -- I did ask Mr. Neary to use his 13 office. I didn't ask him to bring 30 people to his office. 14 And if I would have been asked, I would have arranged for 15 something for 30 people. 16 And I just think -- I'm not comfortable -- I do 17 want to get the people designated, but I do want to resolve 18 this issue because it's not appropriate, in my opinion, to 19 show up at a deposition with 30 people without some kind of 20 advance notice. 21 I'm happy to take every one of those 30 people's 22 deposition -- 23 MR. BIGGS: Maybe we could move to the tribal 24 office. It's a huge facility. And it's only 20 minutes 25 away and it's near Mr. Hunt's facility and everybody could	17	19
1 MR. BIGGS: You're not qualified -- 2 MR. NEARY: I'm joining in the deposition. 3 MR. BIGGS: Who are -- did you drop the lawsuit, 4 Mr. Herb? Aren't you in adversarial position with 5 Mr. Neary? Is this a real lawsuit or is it a charade? 6 MR. NEARY: It's not for us to answer questions. 7 MR. BIGGS: You know what? This is really 8 bizarre. I mean, it is so bizarre, I didn't catch it at 9 first. 10 This is not your deposition, Mr. Neary. 11 MR. NEARY: Yeah. 12 MR. BIGGS: I'd like to read into the record that 13 I am looking at a Notice of Taking Deposition of Person 14 Most Knowledgeable and Demand for Documents, and it's from 15 Hans Herb, Esquire, SBN 136018. 16 Sir, Mr. Neary, I don't see your name anywhere on 17 this. I am aware that Mr. Herb has filed a cross-complaint 18 against your client. Now we have the specter that you're 19 sitting here, asking me questions. 20 Sir, this is not your deposition. 21 MR. NEARY: I'm a participant in -- 22 MR. BIGGS: I'm not -- 23 MR. NEARY: I'm a party and I'm a participant 24 and I'm entitled -- 25 MR. BIGGS: You know what? You have a conflict of	1 be comfortable and.... 2 MR. HERB: What I'd like to know is -- and, again, 3 my -- for the purpose of the record, because it seems like 4 that's where this is going, some people identified as an 5 association filed a lawsuit against my clients, claiming 6 that they were harmed by activity caused by my clients. 7 I don't know who the people are, I have no idea. 8 I checked, I couldn't find any record of them. I couldn't 9 find -- they're not incorporated, there's no information -- 10 MR. BIGGS: Well, they're here now and we have the 11 bylaws and we're ready to show you everything you want to 12 see. There's nothing we have to hide. In fact, we're 13 forthcoming. We actually, instead of putting something on 14 paper, we've actually done the real thing here and brought 15 the actual people so that you can do that, and you can chat 16 with all of them on the record. 17 I'm going to stick to my position that this is not 18 Mr. Neary's deposition, this is your deposition. And I 19 <u>would advise you that each of you has already violated the</u> 20 <u>State Bar Rules of Ethics.</u> You're in adversarial position 21 and now the two of you are sitting, taking a joint 22 deposition. This is a serious problem. I'm very concerned 23 about that. 24 MR. NEARY: What's your concern? 25 MR. BIGGS: My concern is it's a violation of the	18	20

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1 State Bar Rules of Ethics. Right now you're required to,
2 in writing, hand Mr. Hunt a letter that, at minimum, you've
3 presented an actual conflict of interest; and if you've
4 created a conflict of interest, you must withdraw from this
5 case right now. Absolutely. I'm also required to report
6 this to the State Bar.

7 MR. NEARY: Report what?

8 MR. BIGGS: That you are violating the ethics. If
9 you looked at the State Bar Web site in the last month,
10 you'd see there's a mandatory reporting duty. Anytime an
11 officer of the court sees that another officer of the court
12 has violated the ethics, it's mandatory reporting.

13 It's a little old news up here in Mendocino. They
14 don't do things so much like that up here and people get a
15 little relaxed. But I don't run my cases that way. No,
16 sir. You're presenting a huge problem.

17 MR. NEARY: What's the problem?

18 MR. BIGGS: I just told you. I'm not going to
19 repeat myself.

20 MR. NEARY: You're saying it's a conflict of
21 interest for me to be present at a deposition that has been
22 noticed in this case.

23 MR. BIGGS: You're able to be present, but you're
24 asking me the questions for your adversary's deposition.
25 You're in litigation with this man, Mr. Herb, and his

21

1 clients --

2 MR. NEARY: I'm not asking any question. I'm
3 just --

4 MR. HERB: We have two cross-complaints here. The
5 Mayfields have sued the Hunts. Now the Hunts' attorney is
6 running the deposition as Mr. Herb just sits here.

7 That is not only a potential conflict of interest
8 which you need to disclose immediately to Mr. Hunt or
9 you'll be in violation, he has to sign a letter. Okay?
10 Otherwise, you can be disqualified in trial. Okay? We
11 could be two months down the road, I could file a motion to
12 disqualify you just on what's happened today.

13 You've created a potential conflict of interest
14 you have to disclose in writing to your client, he has to
15 acknowledge it. If, at any time, you see an actual
16 conflict, you have to withdraw, sir.

17 MR. NEARY: Yeah. I'm just asking you who the
18 person most knowledge is, who the deponents are going to be
19 today?

20 MR. BIGGS: I'm not going to answer any more of
21 your questions because you have no standing or authority to
22 ask me questions.

23 MR. NEARY: I'm representing a party to this
24 action.

25 MR. BIGGS: This is Mr. Herb's deposition.

22

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1 MR. NEARY: Okay. Hans, do you want to bring in
2 30 people here and have 30 people testify?

3 MR. HERB: No. What I'd like to do is get back to
4 what I was saying before.

5 Under the Federal Rules of Civil Procedure, if I
6 don't know who to ask for, I'm entitled to ask for the most
7 knowledgeable person to be presented. And we may well want
8 to take the deposition of all 30 people, but what I'm
9 looking for today is the one most knowledgeable person who
10 can tell me what it is that -- who I should be talking to.

11 MR. BIGGS: That's why Dr. Edmunds is sitting on
12 your left right there. He will be able to give you
13 information about the structure and the logistics of the
14 Association.

15 And then what I have here is a group of people,
16 individuals, who basically are on call to testify. I just
17 want them to be accommodated. They're all standing out in
18 the sun in a parking lot.

19 The only issue that I'm standing on at this point
20 is I'd just like, just like your clients are sitting here
21 inside, I'd like them sitting here inside. I don't think
22 any of them have a problem with sitting on their rear ends
23 in the hallway. I don't see any operations or activities
24 they'd interfere with. I think they'd all be very polite
25 and very respectful.

23

1 And that's all I'm saying. And then we could
2 start with Mr. Edmunds. And then as your line of
3 questioning goes on, if you'd like to speak to another
4 person who is knowledgeable, I can just simply walk out in
5 the hallway and bring such person in here, identify them
6 for the record, and we could move on.

7 MR. HERB: Okay. Are the people outside officers?

8 MR. BIGGS: Dr. Edmunds may answer that question.

9 DAVID EDMUNDS: Yes, some of them are.

10 MR. HERB: Okay. Are the people out there
11 directors?

12 DAVID EDMUNDS: One is, yes.

13 MR. HERB: Okay. And are the people out there
14 managing agents?

15 DAVID EDMUNDS: I'm not sure what that term means.

16 MR. HERB: Somebody who is in charge or
17 responsible, who has authority to act on behalf of the
18 Association.

19 DAVID EDMUNDS: Yes.

20 MR. HERB: Okay. What are just the names of just
21 the officers, directors, and managing agents?

22 DAVID EDMUNDS: Those who are out there are Don
23 Williams and Alicia Webb.

24 MR. HERB: How do you spell Alicia's last name?

25 DAVID EDMUNDS: W-e-b-b. Her first name is

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<p>1 A-I-I-C-I-a.</p> <p>2 MR. HERB: Anyone else?</p> <p>3 DAVID EDMUNDS: We have associates that</p> <p>4 participate in an informal basis. David Ponton, the</p> <p>5 Housing Director; Erika Williams, who works in the Tribal</p> <p>6 Historic Preservation office; Angela James, who also works</p> <p>7 with the Tribal Historic Preservation office.</p> <p>8 MR. HERB: I'm sorry. David's second name was?</p> <p>9 DAVID EDMUNDS: Ponton, P-o-n-t-o-n.</p> <p>10 Lenora Steele is our Self-Governance Coordinator</p> <p>11 who also participates informally. And we have -- okay.</p> <p>12 MR. HERB: Is there more?</p> <p>13 DAVID EDMUNDS: We're in the process of recruiting</p> <p>14 youth members, and I'm not sure if it's appropriate to name</p> <p>15 them at this point, but Jason Steele has participated in</p> <p>16 one of our meetings.</p> <p>17 MR. HERB: See, normally what happens is when the</p> <p>18 Notice goes out, normally one person is produced and</p> <p>19 identifies who the other people are so that then I can</p> <p>20 notice them. But before I know who to notice, I have to</p> <p>21 get one person.</p> <p>22 MR. BIGGS: I understand. That's fine. I think</p> <p>23 we're getting off to a good start right now. We're on</p> <p>24 track.</p> <p>25 MR. HERB: See, it's kind of like in the Exxon</p> <p style="text-align: right;">25</p>	<p>1 that there are different cultural aspects that are uniquely</p> <p>2 Native American that come into play here.</p> <p>3 So as to not bombard counsel with a whole bunch of</p> <p>4 people, so to speak, what I propose is we have a pool, a</p> <p>5 reservoir of people who can -- you can depose who are</p> <p>6 available today so you don't have to renote them.</p> <p>7 For example, Dr. Edmunds just gave you a list of</p> <p>8 individuals, and these individuals are in that pool. And</p> <p>9 if you would like to call them, they're here.</p> <p>10 At this point, I am only asking that they be</p> <p>11 accommodated. They are all standing out in the parking lot</p> <p>12 and if something could be done to make them accommodated.</p> <p>13 It doesn't have to be anything fancy. Like maybe they</p> <p>14 could all be sitting down in the hallway outside of this</p> <p>15 room. That's all we're asking.</p> <p>16 MR. HERB: Well, again, in my general</p> <p>17 experience -- first of all, this is not my office, this is</p> <p>18 private property, it doesn't belong to me. I asked</p> <p>19 Mr. Neary for permission to conduct a deposition here. He</p> <p>20 gave me permission to conduct a deposition here. He did</p> <p>21 not give me permission to invite 30 people to his office.</p> <p>22 MR. BIGGS: I respect that and we all respect</p> <p>23 that.</p> <p>24 MR. HERB: And I don't think he was particularly</p> <p>25 happy, even, that my client was here, but he respects the</p> <p style="text-align: right;">27</p>
<p>1 Valdez spill, if you think about it. If they just said,</p> <p>2 "Hey, give us the most knowledgeable person and every</p> <p>3 shareholder or officer or director or employee of Exxon</p> <p>4 Mobil came, there would be over a hundred thousand people</p> <p>5 that would be at the deposition, and you can imagine how</p> <p>6 difficult it would be to take a hundred thousand people's</p> <p>7 deposition to find out what someone knew.</p> <p>8 So it's probably unlikely that what the court</p> <p>9 rules envisioned is that everybody that had any interest</p> <p>10 would be involved. What they ask for is you're under a</p> <p>11 duty to provide me with the most knowledgeable person, or</p> <p>12 persons if there's two different things --</p> <p>13 MR. BIGGS: Mr. Herb, not to be disrespectful and</p> <p>14 interrupt you, but we understand that and we do not foresee</p> <p>15 that you will want to take all of their depositions. A lot</p> <p>16 of them just wanted to come because this is part -- they're</p> <p>17 real parties, just like we have people here on the other</p> <p>18 side. There are some individuals you'll probably want to</p> <p>19 depose this morning.</p> <p>20 I'm in full agreement with everything you're</p> <p>21 saying, and I did have a telephone conversation with you,</p> <p>22 and I explained to you that there was no person who was</p> <p>23 most knowledgeable. We had that conversation Friday</p> <p>24 afternoon a week ago. And it was quite a lengthy</p> <p>25 conversation, and I did explain to you and give you notice</p> <p style="text-align: right;">26</p>	<p>1 right of a party in the case to be here.</p> <p>2 I don't have a problem, per se, with the fact that</p> <p>3 people want to participate. I just think the logistics of</p> <p>4 this are such that it's not reasonable. And I think if we</p> <p>5 picked up the phone and called the judge and said, "Judge,</p> <p>6 there's 30 people here who want to participate in a</p> <p>7 conference room that can barely fit 10 people" --</p> <p>8 MR. BIGGS: Excuse me. That's mischaracterizing</p> <p>9 what we're asking for. We never asked for 30 people to</p> <p>10 come into this conference room. We're just asking them to</p> <p>11 come in outside from the sun that's beating down on them,</p> <p>12 standing out on the street.</p> <p>13 We're suggesting that they sit on their rear ends</p> <p>14 in the hallway outside the door. There's a long hallway, I</p> <p>15 observed, it's about 40 feet long. I didn't see any other</p> <p>16 commercial activity going on here, and I don't see how that</p> <p>17 would inconvenience anybody.</p> <p>18 In fact, if they were all sitting out there and</p> <p>19 you were beginning your line of questions with Dr. Edmunds,</p> <p>20 you'd be gathering information and then, to make this</p> <p>21 expeditious, I could then walk outside, say, if you wanted</p> <p>22 to depose Angela James, for instance. Then I would walk</p> <p>23 20 feet to the door and I would say, "Angela, could you</p> <p>24 come in here, please" and then she'd be in here. And then,</p> <p>25 in a matter of minutes, she'd be sworn in and then you'd be</p> <p style="text-align: right;">28</p>

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<p>1 running your line of questions with Angela, then we'd be 2 done and I'd say, "Okay, you're done. You can go home 3 now." 4 And say you pulled another individual that 5 Dr. Edmunds has given you. Again, I would walk to the door 6 and I'd have them come in here. Actually, if we were doing 7 that right now -- if we'd been doing that for the last 8 10 minutes, you probably already would be done with 9 Dr. Edmunds and speaking with somebody else and then maybe 10 coming back around and speaking to him again. 11 MR. HERB: Well, that's -- when I take a 12 deposition, I'm going to find out something about the 13 deponent. So probably every deponent is going to spend an 14 hour or more with me telling me about their background, 15 their experience, any prior lawsuits, any prior involvement 16 in anything. 17 And if there's just 10 people that I have to go 18 through where they lived, where they went to school, how 19 many times they've been involved with the courts, how many 20 times they've testified, how many -- whatever. I don't 21 know. Maybe none of these people have ever had any 22 involvement and never moved or whatever, but I would 23 anticipate just one hour per person is going to take more 24 than one day just to do the background on all of the 25 people.</p> <p align="right">29</p>	<p>1 from here that are also members of the Pinoleville Pomo 2 Nation that couldn't be here today. These individuals are 3 people in the neighborhood, so to speak, that wanted to 4 come on down and see what's going on and offer their input. 5 And, again, I'm saying we can have them sitting on 6 their rear ends in the hallway, we don't even have to give 7 them chairs. We're not even asking for chairs, Mr. Herb. 8 Okay? We don't even want to use your bathroom -- 9 Mr. Neary's bathrooms here if that's a problem. They're 10 all standing outside. Your clients are all sitting here 11 inside with us. 12 MR. NEARY: Well, I am a party in this case, and 13 there's two different issues here. One is accommodation of 14 people who want to observe the deposition. That's one 15 thing. But I'm entitled to know who is being designated as 16 the person most knowledgeable. 17 MR. BIGGS: Well, I can accommodate you. What 18 I'll do is I'll walk outside with a notepad and a pen, and 19 I'll write down the names of the individuals for you so 20 you'll know. 21 MR. NEARY: I need to know who is designated as 22 the person most knowledgeable for the specific allegations 23 that this deposition was noticed for. 24 MR. BIGGS: Well -- 25 MR. NEARY: And the reason why I need to know that</p> <p align="right">31</p>
<p>1 And since I don't know what they're going to 2 testify about, since I don't know who -- I mean, it's like, 3 again, going back to the Exxon example and saying, "There's 4 a hundred thousand people. Just pick one. And then if 5 that one doesn't know the answer, I'll bring in another 6 one." 7 MR. BIGGS: But that was Exxon and the facts are 8 distinguishable. There, there was a tanker spill, the 9 Valdez spill. And, here, we have a very unique 10 circumstance. We have land that Pomo Indians have lived on 11 for 10,000 years, we have cultural issues here that are 12 unique. There are some things that individuals do that 13 other individuals don't do. There are some things 14 individuals know about that other individuals know about. 15 There are a lot of people in the Association. 16 Also, the Pinoleville Pomo Nation is plaintiff. 17 Every single individual, therefore, could be considered a 18 plaintiff, they have an interest in it. And, you know, 19 they have a right to be at this deposition. 20 MR. HERB: Well -- 21 MR. BIGGS: And you knew that you were suing 22 Pinoleville Pomo Nation on your counterclaim. You know 23 that the Pinoleville Pomo Nation sued your client. This is 24 a large group of people. 25 There are people who, you know, live very far away</p> <p align="right">30</p>	<p>1 is, after Mr. Herb has completed with his questioning, I'm 2 entitled to ask questions. Now -- 3 MR. BIGGS: You are. 4 MR. NEARY: -- so I need to know who is being 5 designated for a specific point so that I can -- because, 6 if people are dismissed out of here and it turns out later, 7 well, that was the person who was most knowledge about, you 8 know, some small little aspect of this case, they're gone. 9 So -- 10 MR. BIGGS: They're ready to stay here all day and 11 they're ready to come back every day. You know, everything 12 you've just said, nothing we have a problem with. Okay? 13 We want to accommodate you. 14 MR. NEARY: Would you designate them, then. 15 MR. BIGGS: There is more than one person most 16 knowledgeable. 17 MR. NEARY: Okay. I accept -- 18 MR. BIGGS: Mr. Edmunds -- Dr. Edmunds can speak 19 to the logistics, but he cannot speak to the sweats. He 20 can't speak to the native plant gardens. He can't speak to 21 the diminution of the willows that have been used for 22 basket weaving for 10,000 years. 23 MR. NEARY: I don't care that he can't do that. I 24 just want to know who it is that's going to speak on the 25 allegations of this Complaint, the person most</p> <p align="right">32</p>

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<p>1 knowledgeable.</p> <p>2 MR. BIGGS: There is no person most knowledgeable</p> <p>3 as an individual.</p> <p>4 MR. NEARY: But....</p> <p>5 MR. HERB: Maybe I can follow up on that. The</p> <p>6 duty is on you guys. You're supposed to inquire. If I</p> <p>7 don't know who at Exxon --</p> <p>8 MR. BIGGS: We did.</p> <p>9 MR. HERB: -- Exxon is supposed to --</p> <p>10 MR. BIGGS: We had a mass meeting Saturday. Okay?</p> <p>11 MR. NEARY: Well, let's let Hans finish --</p> <p>12 MR. BIGGS: And a large group of people showed up,</p> <p>13 and I made the conclusion that there is no one person who</p> <p>14 can speak to all of the elements that you're going to ask</p> <p>15 about. There just isn't.</p> <p>16 MR. HERB: Well, how did -- when these people came</p> <p>17 here, what did they expect to testify to? That's a better</p> <p>18 way to ask it.</p> <p>19 MR. BIGGS: It's their understanding that they</p> <p>20 would testify as to cultural, recreation, economic</p> <p>21 integrity, the things that are listed as a criteria in the</p> <p>22 Complaint and the Clean Water Act and the RCRA Notices.</p> <p>23 MR. HERB: So who is going to speak to cultural?</p> <p>24 MR. NEARY: And I'll just point out the word</p> <p>25 "cultural" doesn't appear in any of the three allegations.</p> <p style="text-align: right;">33</p>	<p>1 thing and lay a foundation that, yes, there really is an</p> <p>2 Environmental Association. Dr. Edmunds is the man to give</p> <p>3 you that information.</p> <p>4 Then what I'd like to do is, after you're -- if</p> <p>5 that's the way you go, have you depose a few other people.</p> <p>6 Not 30 people, maybe even not more than five. Okay? But</p> <p>7 if you give me an idea -- this is a proposal. After you</p> <p>8 speak with Dr. Edmunds, you give me an idea of which</p> <p>9 direction the two of you would go, and then I would</p> <p>10 suggest, "Well, how about Angela James," for example, and</p> <p>11 so and so. And then we would do it that way.</p> <p>12 Right now I just need a place for these people to</p> <p>13 sit. They are outside on the street, on the sidewalk. I</p> <p>14 don't see why they can't sit in the hallway.</p> <p>15 MR. NEARY: I haven't said they can't sit in the</p> <p>16 hallway. I'm just --</p> <p>17 MR. BIGGS: My gosh. If you could have them come</p> <p>18 in and sit in the hallway, we could get started and do the</p> <p>19 other things you want to do.</p> <p>20 MR. NEARY: But what I want to know is who is</p> <p>21 being designated as the person most knowledge. And if it's</p> <p>22 just Mr. Edmunds and then 29 other people, that's not good</p> <p>23 enough.</p> <p>24 MR. BIGGS: That's -- I'm on the same page with</p> <p>25 you. I just need more information from you or Mr. Herb</p> <p style="text-align: right;">35</p>
<p>1 MR. BIGGS: It doesn't have to.</p> <p>2 MR. NEARY: Okay. So we're not asking -- this</p> <p>3 Deposition Notice isn't asking for the person most</p> <p>4 knowledgeable as to cultural issues. It's asking for the</p> <p>5 person most knowledgeable as to these specific allegations,</p> <p>6 and that's really what I'm entitled to know before this</p> <p>7 deposition commences.</p> <p>8 MR. BIGGS: Well, I think you are, too, okay? But</p> <p>9 I don't think that Dr. Edmunds can speak to everything</p> <p>10 that's important. Okay?</p> <p>11 MR. NEARY: I understand that.</p> <p>12 MR. BIGGS: And I'm asking you to come up with</p> <p>13 some kind of plan to where the people who have come here</p> <p>14 today can be accommodated with the most sparse of</p> <p>15 accommodations, and we pick a few people -- I would propose</p> <p>16 that Dr. Edmunds --</p> <p>17 MR. NEARY: Now you're going off on a different</p> <p>18 topic here.</p> <p>19 MR. BIGGS: No, I'm not. Just hear me out.</p> <p>20 Dr. Edmunds is sitting right here. He can be the</p> <p>21 first deponent and that is if your order of questioning</p> <p>22 would begin with the structure of the Association. We</p> <p>23 figured and we brought documents to the effect that you</p> <p>24 would want to know about the meetings, minutes of the</p> <p>25 meetings, who has gone to the meetings, and that sort of</p> <p style="text-align: right;">34</p>	<p>1 about what it is you want to ask about and then I can</p> <p>2 designate those people. I just have them here -- I need</p> <p>3 them here so I can go into the pool of people and then</p> <p>4 bring in that person. I don't know precisely where you're</p> <p>5 going to go. But in bringing these people, we sought to</p> <p>6 accommodate any questions you may ask.</p> <p>7 MR. NEARY: Well, I'll point out that it's your</p> <p>8 Complaint, and the Deposition Notice asked for the person</p> <p>9 most knowledgeable as to three paragraphs in a rather</p> <p>10 lengthy Complaint, a hundred-paragraph Complaint.</p> <p>11 MR. BIGGS: Yes, a very lengthy Complaint. And if</p> <p>12 you look into the causes of action for public nuisance, you</p> <p>13 see reference to the ecosystem, endangered species.</p> <p>14 Theoretically, every single individual from that site to</p> <p>15 Jenner is a potential plaintiff here.</p> <p>16 Actually, speaking of <i>Exxon Valdez</i>, you should be</p> <p>17 grateful that this hasn't gotten out in the press yet and</p> <p>18 people aren't jumping into this lawsuit.</p> <p>19 MR. NEARY: Well, I don't dispute that, but --</p> <p>20 MR. BIGGS: We brought an action for a public</p> <p>21 nuisance --</p> <p>22 MR. NEARY: But the question is who are you</p> <p>23 designating. It's not -- you don't bring every member of</p> <p>24 the public.</p> <p>25 MR. BIGGS: We haven't done that. We brought the</p> <p style="text-align: right;">36</p>

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1 Environmental Association, members of the Tribal Council
 2 who represent Pinoleville Pomo Nation, and we brought other
 3 people who are involved in some of the Native American
 4 programs --
 5 MR. NEARY: Wait a minute.
 6 MR. BIGGS: -- having to do with history and
 7 culture.
 8 MR. NEARY: Now, maybe we're off track here,
 9 because I think you asked him who the officers of the
 10 Environmental Association are and now you're talking about
 11 the Pomo Nation, so --
 12 MR. BIGGS: They're a plaintiff.
 13 MR. NEARY: Yeah, but this deposition is for the
 14 person most knowledgeable at the Pinoleville Pomo Nation
 15 Environmental Association.
 16 MR. BIGGS: But they have a right to be here, just
 17 like you have a right to be here.
 18 MR. NEARY: That's a separate issue. The question
 19 is -- so, I mean, if he's saying that Don Williams and
 20 Alicia Webb --
 21 MR. BIGGS: You're not on the Notice of
 22 Deposition, either.
 23 MR. NEARY: You'll see my name on there and I'm
 24 representing a party and I'm entitled to know who is being
 25 designated so I know whose deposition is being taken today.

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1 MR. BIGGS: Right now we're going to designate
 2 Dr. Edmunds, but we are reserving the definition of what
 3 person most knowledgeable is in this context, and we are
 4 prepared to submit other deponents should the need arise
 5 from counsel to ask further questions that go to
 6 allegations in the Complaint.
 7 Those witnesses are here and they are available.
 8 And if you'd like to proceed with Dr. Edmunds, I don't have
 9 a problem with that. It's just, out of courtesy, I would
 10 like the people who have taken time off from their work and
 11 their families and school who have come here to be a part
 12 of this to be accommodated in some reasonable fashion.
 13 MR. NEARY: Well, there's not enough room in this
 14 room for 30 people.
 15 MR. BIGGS: I don't propose they come into this
 16 room.
 17 MR. NEARY: So where do you propose --
 18 MR. BIGGS: I propose they sit out in the hallway,
 19 on the floor.
 20 MR. NEARY: That's fine. If they want to sit in
 21 the hallway, that's --
 22 MR. BIGGS: Let's just stop a minute. Because if
 23 that's fine, then what I'd like to do is go and get those
 24 people, and then I would like to present to you Dr. Edmunds
 25 as the person most knowledgeable, with the reservation that

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1 there are other people who would testify who would be more
 2 knowledgeable than Dr. Edmunds as to certain other elements.
 3 But I would propose that let's see.
 4 MR. NEARY: I don't agree to that at all. I need
 5 to know who is going to be testifying as to the -- who is
 6 the person most knowledgeable. I just need the identity.
 7 You can reserve to bring in other people, but you
 8 can't change the person most knowledgeable question by
 9 question. So, in advance, I want you to identify the
 10 people who you're designating as the person most
 11 knowledgeable. It's a very simple question.
 12 Now, if, perchance, you make a mistake and you
 13 forgot to designate somebody, I can understand that; and if
 14 they happen to be here, fine. But you know, right now,
 15 before we commence, I'm entitled to know who it is that
 16 you're designating as the person most knowledgeable. It may
 17 be 34 people, it might be a hundred people, but I just need
 18 to know who they are and for what topics they're being
 19 designated on.
 20 MR. BIGGS: Would you like a list of their names
 21 and the topics right now?
 22 MR. NEARY: That's -- yes. That's what I've been
 23 asking for for half an hour.
 24 MR. BIGGS: We can do that. And if I may, I would
 25 like to direct questions to Dr. Edmunds, Mr. Provencher and

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1 Chairperson Williams, who are with us now.
 2 MR. NEARY: Do you want to take an adjournment --
 3 MR. BIGGS: No.
 4 MR. NEARY: -- and consult with your clients --
 5 MR. BIGGS: No, I don't need to do that.
 6 MR. NEARY: You're going to ask your clients about
 7 this in front of opposing counsel?
 8 MR. BIGGS: I have no problem with that at all.
 9 MR. NEARY: Okay.
 10 MR. HERB: And before you go on with that, I just
 11 want to add this in, is that one of the reasons I need to
 12 know who is designated is, because this is a deposition and
 13 the testimony that's going to be taken here today is going
 14 to be binding on the Association, I need to know that the
 15 person that I'm asking is the right person.
 16 MR. BIGGS: That's why all of these people are
 17 here, because there is no one person who can speak to the
 18 great array of allegations in the Complaint.
 19 MR. HERB: So let me just ask you. If I came here
 20 today with a settlement offer, I would have to talk to all
 21 30 people individually?
 22 MR. BIGGS: No; you would speak to their attorney,
 23 as you do in any other condition. You know that.
 24 MR. HERB: Well, what I'm trying to find out is.
 25 MR. BIGGS: The attorneys convey settlement offers

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<p>1 to their clients.</p> <p>2 MR. HERB: I'm just trying to find someone -- I'm</p> <p>3 assuming -- you're here with the chairperson of the tribe.</p> <p>4 I would assume that if I went to some other tribal member</p> <p>5 and they told me something and it wasn't consistent with</p> <p>6 what she believed, as I sit here today, I believe that she</p> <p>7 would tell me, "I don't care what they told you. I'm the</p> <p>8 chairperson and my decision is the only one that counts."</p> <p>9 So all I'm asking you is whose decision counts --</p> <p>10 MR. BIGGS: I would object to that as a</p> <p>11 conclusion, and I don't know what to call that statement</p> <p>12 you just made. It is, with all due respect, in complete</p> <p>13 ignorance of how a tribal government operates. A tribal</p> <p>14 government has a legislative branch, it has an executive</p> <p>15 branch, it could have a judicial branch, just like the</p> <p>16 State of California. This is a Federally-recognized</p> <p>17 government that has the same standing as the State of</p> <p>18 California under law here, and it's not a dictatorship.</p> <p>19 MR. HERB: I didn't say it was. I'm just trying</p> <p>20 to find out --</p> <p>21 MR. BIGGS: You did say it.</p> <p>22 MR. HERB: No, I --</p> <p>23 MR. BIGGS: Yes, you did. Now I want to back up</p> <p>24 now.</p> <p>25 There are a couple of things that concern me here.</p> <p align="right">41</p>	<p>1 page here for a copy of this transcript, and this is</p> <p>2 something you should have done before.</p> <p>3 If you want to take some time and confer with your</p> <p>4 clients, that's fine.</p> <p>5 MR. BIGGS: No. Excuse me.</p> <p>6 Chairperson Williams?</p> <p>7 LEONA WILLIAMS: Yes.</p> <p>8 MR. BIGGS: Who would be the person most</p> <p>9 knowledgeable as to native plants that are used in basketry?</p> <p>10 MR. NEARY: I'd just point out that she's the</p> <p>11 chairperson of the Nation, not of the deponent here, which</p> <p>12 is the Pinoleville Pomo Nation Environmental Association.</p> <p>13 So that's the --</p> <p>14 MR. BIGGS: Well, she's not sworn in. Okay? So</p> <p>15 let's go off record for a minute.</p> <p>16 MR. NEARY: No, I think everything we say here in</p> <p>17 a group session --</p> <p>18 MR. BIGGS: You want it on the record.</p> <p>19 You may answer the question.</p> <p>20 LEONA WILLIAMS: The most knowledgeable?</p> <p>21 MR. NEARY: Wait a minute. First, would you swear</p> <p>22 her, please. She's being designated as the person --</p> <p>23 MR. BIGGS: No, she's not. She's going to give</p> <p>24 testimony and she's not sworn.</p> <p>25 MR. NEARY: This is not your deposition, Michael.</p> <p align="right">43</p>
<p>1 And I think that we've made a lot of progress in getting</p> <p>2 this deposition going. A major concern of mine was the</p> <p>3 witnesses who came here, the deponents who came here today,</p> <p>4 be accommodated; and, just like your clients, be allowed to</p> <p>5 come in off the street, inside this building but outside</p> <p>6 the room.</p> <p>7 Second, this is a complex issue. I do not think,</p> <p>8 with all due respect, that either defense counsel has ever</p> <p>9 been involved in any kind of litigation with a governmental</p> <p>10 entity that is a plaintiff while, at the same time, an</p> <p>11 environmental association as a plaintiff.</p> <p>12 Furthermore, I don't think that, with all due</p> <p>13 respect, either counsel has that much knowledge about</p> <p>14 Federal Indian law or about Indian culture. There are some</p> <p>15 unique circumstances here.</p> <p>16 On the other hand, the plaintiffs respect and</p> <p>17 acknowledge the concerns of Mr. Neary, and give great</p> <p>18 credibility and deference to what he has to say and want to</p> <p>19 accommodate Mr. Neary's criteria.</p> <p>20 So I think that a way to identify some of the</p> <p>21 individuals would be to, very simply, for me to ask some</p> <p>22 questions, if I may. I don't have a problem with that. In</p> <p>23 fact, I'm going to do that.</p> <p>24 MR. NEARY: Just a minute. I have a problem. If</p> <p>25 you want to confer with your clients -- we're paying by the</p> <p align="right">42</p>	<p>1 MR. BIGGS: But I just asked you, I said, "Do we</p> <p>2 want to go off the record?" You said, "No."</p> <p>3 So now I'm asking her a question. If she's going</p> <p>4 to speak on the record, I insist that she be sworn. If you</p> <p>5 don't want her sworn, then we need to go off the record.</p> <p>6 MR. HERB: I'm just wondering if we should get the</p> <p>7 judge involved because it's noon, the judge is going to be</p> <p>8 leaving, and I really want to get my deposition done.</p> <p>9 MR. BIGGS: Go ahead. Get the judge on.</p> <p>10 MR. HERB: Can we see if we can.</p> <p>11 MR. NEARY: We have a phone right here.</p> <p>12 We're going to stay on the record here --</p> <p>13 MR. BIGGS: Wait a minute. May the record -- no,</p> <p>14 we need to go off the record for a minute because I'm going</p> <p>15 to go out and have a meeting with Chairperson Williams.</p> <p>16 MR. HERB: Well, do you want me to wait on that</p> <p>17 call until after you --</p> <p>18 MR. BIGGS: Well, just wait a minute. Yeah.</p> <p>19 So we need to go off record.</p> <p>20 THE REPORTER: I have to have everybody agree.</p> <p>21 MR. NEARY: So if you want to meet and confer with</p> <p>22 your clients, take them all out --</p> <p>23 MR. BIGGS: I'm not going to leave the room while</p> <p>24 we're on the record.</p> <p>25 MR. NEARY: Okay. Well, then take everybody with</p> <p align="right">44</p>

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<p>1 you or we're staying on the record. 2 LEONA WILLIAMS: You can stay here and -- 3 MR. BIGGS: Okay. She just needs to go out and 4 speak with the people. 5 MR. NEARY: Are you looking for the court phone 6 number? 7 MR. HERB: Yes. 8 MR. NEARY: I might have that. Why don't you ask 9 Jennifer. 10 (Hans Herb exited the deposition suite briefly at 11:57 a.m.) 11 12 MR. HERB: I didn't mean to be ordering your staff 13 around. I asked if -- 14 MR. NEARY: That's fine. 15 MR. HERB: -- she wouldn't mind calling the clerk 16 and see if -- 17 MR. NEARY: We've got a phone right here; we can 18 put it on the speaker. 19 (Pause in proceedings at 11:58 a.m. until 12:00 noon.) 20 21 MR. NEARY: I want them to designate who the 22 person most knowledgeable is before we start. 23 MR. HERB: And then with regard to this other 24 issue, I think that the Court's going to need to give me 25 some direction because I don't have any -- even if I</p> <p align="right">45</p>	<p>1 MR. BIGGS: That's why I think it would be a great 2 idea for you to begin your deposition with Dr. Edmunds, 3 because you can ask him questions and you can learn about 4 those answers that you need; and then, if you need to call 5 those people, they're here for your convenience. That's 6 why he's first. 7 MR. HERB: The only problem is that it's -- one, 8 it's not my burden; and, two, I don't really know, I don't 9 know who has authority. I've already obviously made a 10 mistake. I'm not trying to offend anyone. I'm just trying 11 to find out -- 12 MR. BIGGS: There is no authority in any one 13 person in the Environmental Association. It's a group of 14 people. And when you ask Dr. Edmunds for the charter on 15 this, you'll be able to read and see how it has been 16 structured. I believe this thing was started about two 17 years ago, and there have been many, many, many meetings, 18 agendas, programs. 19 It's quite a sophisticated association, actually. 20 It's not a piece of paper that is a ruse. And if anybody 21 thought that, I think they're going to be in for a big 22 surprise. And can you image the specter today if you 23 started learning more things, and then you would be 24 noticing people for further depositions down the road. 25 Here now, for defense counsel's convenience,</p> <p align="right">47</p>
<p>1 noticed the deposition, this is not my office. I don't 2 have authority to grant people the right to come in or stay 3 out of this building. It's not my property. 4 So I need to get some direction from the judge in 5 terms of what she believes is the appropriate response. 6 MR. BIGGS: My position with the judge is that 7 we're ready to begin the deposition of Dr. Edmunds, who 8 will testify as to the structure and organization of the 9 Environmental Association and also give you documents 10 pertaining to that, and that all we're asking is that the 11 definition of "person most knowledgeable" here in this 12 unique situation is kind of broad and we don't want it 13 limited to Dr. Edmunds because he cannot testify as to 14 things that other people could testify to, and I don't want 15 those issues closed out. And that's all. 16 And that, moreover, we thought we were in 17 agreement that these people could come in out of the sun 18 outside and sit in the hallway. There's nobody out there. 19 And it's our position that that is the only block into 20 getting this deposition started. 21 MR. HERB: Well, and I think, with regard to 22 Mr. Neary's point, I just need -- it doesn't have to be -- 23 I need to know that I'm speaking to the right person. I 24 don't want to waste anybody's time, and so I need to know 25 that I'm speaking to someone that has authority.</p> <p align="right">46</p>	<p>1 anybody that I anticipated might be useful for what you 2 need to do is here for your convenience now. It's just 3 they're outside in the sun on the street in a dirt parking 4 lot. 5 Dr. Edmunds is sitting next to you and he's ready 6 to begin. He's well prepared, he has all of his documents, 7 and I'm perfectly willing to designate him as person most 8 knowledgeable, with the reservation that there are some 9 other issues that are material to association standing that 10 he is not most knowledgeable about. But I have brought 11 those individuals that would testify to those things here 12 today. 13 MR. NEARY: And that's your right to do that. The 14 question is: Who are they and what are they most 15 knowledgeable on? It's a very simple question. 16 MR. BIGGS: Well, we could go through that. 17 MR. NEARY: I don't want to ask Dr. Edmunds a 18 question that somebody else is more -- most knowledgeable 19 about. 20 MR. BIGGS: I can verbally, with the assistance of 21 Chairperson Williams, Dr. Edmunds and Mr. Provencher, do 22 that for defense counsel here as we sit. I just need to be 23 in a position to where defense counsel -- there's not an 24 objection to me eliciting those answers from them. 25 MR. NEARY: Okay. So why don't you go ahead and</p> <p align="right">48</p>

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<p>1 do that, then. 2 MR. BIGGS: Thank you. 3 MR. NEARY: That's all I've been asking for. 4 MR. BIGGS: Chairperson Williams -- 5 MR. NEARY: No, no. What I meant was for you to 6 designate who is going to be testifying here today and on 7 what topics. 8 MR. BIGGS: Well, I would like to ask my clients 9 about certain things. Like, for example, with regard to 10 the cultural elements, I don't have the degree of personal 11 knowledge that, say, for instance, Chairperson Williams 12 has. So it would be convenient for me -- I know I asked 13 people -- to have people come and I spoke with people on 14 Saturday as well who would have personal knowledge as to 15 all of these things. 16 MR. NEARY: So I suggest one of two things here. 17 One is you -- we adjourn this deposition, you step out, and 18 you determine who you're going to designate. 19 MR. BIGGS: If you're willing to go off the 20 record, I'd be happy to do that. 21 MR. NEARY: Okay. Then everybody on your side 22 leaves the room. 23 MR. BIGGS: Yes. That's a good way to do it. But 24 we need to go off the record, give us 15 minutes, and then 25 we'll prepare a list. And then, once having done that, if</p> <p style="text-align: right;">49</p>	<p>1 those individuals stand by outside of this room; and if 2 counsel elects to call any one of those individuals, they 3 may do so. 4 To get started, Dr. Edmunds -- he has documents 5 and he has personal knowledge about the structure, the 6 meetings, how it works, and that is his topic area. But 7 he's not Native American. He's a Ph.D. from Arizona, he -- 8 you know, he doesn't know about a lot of things. 9 There's Don Williams, will be one of the 10 individuals on this list. He was born on the reservation; 11 he's 60 years old; he's lived there all his life. And I 12 believe that he is the chairperson of the Environmental 13 Association. So I would say he would be your next person 14 who could be considered most knowledgeable. 15 Now, when I go back outside, there should be two 16 or three other people on the list who can speak to some of 17 the unique cultural activities. Some people are aware that 18 Native Americans have a very close connection with the 19 natural world, unlike a lot of other cultures. So there's 20 things that have been done in that area for thousands of 21 years that only certain people can speak to, and it does go 22 to the allegations and the elements in the Complaint. 23 But, nonetheless, we'll have this adapted to 24 Counsel's criteria for streamlining and organizing and 25 putting some names down.</p> <p style="text-align: right;">51</p>
<p>1 you're willing to allow these people to sit in the 2 hallway -- 3 MR. NEARY: I don't have -- 4 MR. BIGGS: -- then we could started. 5 MR. NEARY: They can sit anywhere they want to. 6 MR. BIGGS: All right. 7 MR. NEARY: It's just they can't fit in a room 8 that can't accommodate them. 9 MR. BIGGS: I certainly agree, and I think 10 everybody in this room feels that way. 11 I'm eager to get started, and I think that is a 12 very fair meeting of the minds here. So if we may go off 13 the record, I'll get busy and get that done as quickly as 14 possible. 15 MR. NEARY: All right. Let's go off the record. 16 MR. BIGGS: Thank you, Counsel. 17 (Break taken at 12:06 p.m. until 12:21 p.m.) 18 MR. BIGGS: Gentlemen, Counsel, I think we're 19 making progress, off to a slow start. But what I have 20 going on outside is we're making a short list, a topical 21 short list. We're designating people who are members of 22 the Association and to what topics they would have personal 23 knowledge to. 24 And, within a few minutes, that list should be 25 done and I will submit it to counsel. And then I will have</p> <p style="text-align: right;">50</p>	<p>1 I have nothing further to say. I am going to go 2 outside and see how that list is going. 3 We also have trimmed down the crowd a bit. I have 4 indicated to some people that they could go -- okay? -- but 5 I do want to bring a smaller group of people into the 6 hallway. They have a vested interest in this, this is very 7 important to them. And if they're allowed to come up here, 8 I don't think I need to tell them to be very polite and 9 respectful. I think they're that way. 10 But I will take responsibility, if Mr. Neary would 11 be gracious enough to allow that, to make sure that things 12 are in a fashion that, you know, would be very pleasant. 13 And, again, I think that you're going to find that 14 Dr. Edmunds is going to be able to give you a lot of 15 information, and he will give you documents, as you 16 request. 17 Now, I do believe in the Notice, it was combined 18 with a request for documents, which require a longer period 19 of time, and I think it is defective in that sense. But 20 we're waiving that. We brought the documents we have. 21 It's not an issue. 22 I didn't want to make an issue that doesn't need 23 to be an issue. I'm not interested in making technical, 24 you know, roadblocks to getting things done. So he does 25 have a whole stack of documents to hand over.</p> <p style="text-align: right;">52</p>

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<p>1 So let me go outside and see how they're doing.</p> <p>2 Any questions, please?</p> <p>3 MR. HERB: Yes. I was thinking, because it is</p> <p>4 12:25, maybe we could take a lunch break, just because -- I</p> <p>5 mean, I was planning on taking a lunch break now for the</p> <p>6 court reporter and everybody else. So maybe come back in</p> <p>7 45 minutes or an hour?</p> <p>8 MR. NEARY: Let's say 1:15.</p> <p>9 MR. BIGGS: I have no objection to that.</p> <p>10 MR. HERB: 1:15. All right.</p> <p>11 MR. BIGGS: Thank you, gentlemen.</p> <p>12 MR. NEARY: I had a comment.</p> <p>13 MR. BIGGS: Oh.</p> <p>14 MR. NEARY: I don't just want lists of people who</p> <p>15 can talk about a subject. This isn't a designation of</p> <p>16 witnesses. This is a designation of the person most</p> <p>17 knowledgeable.</p> <p>18 So if there's -- so it could be multiple people,</p> <p>19 but for the topics that they're designated for, I expect</p> <p>20 them -- I don't want to spend an hour with somebody and</p> <p>21 have them say they don't know anything, that other people</p> <p>22 have more information than they do.</p> <p>23 MR. BIGGS: I hear you loud and clear, and I am</p> <p>24 putting major effort into accommodating that.</p> <p>25 MR. NEARY: All right.</p> <p align="right">53</p>	<p>1 would be earlier, so....</p> <p>2 MR. HERB: Who are the two people who are not</p> <p>3 here?</p> <p>4 MR. BIGGS: I have a list and we'll get that for</p> <p>5 you.</p> <p>6 (Break taken at 1:23 p.m. until 1:25 p.m.)</p> <p>7 MR. BIGGS: Mr. Neary, here is the list for you.</p> <p>8 The two ladies that left aren't on the list; we</p> <p>9 reconfigured the list after they left.</p> <p>10 And, then, sir this is for you.</p> <p>11 MR. HERB: Okay. While we're on the record,</p> <p>12 let's -- it's 1:28 or so. We've been provided with a list</p> <p>13 of one, two, three, four, five -- six people who are</p> <p>14 represented as being responsive to our Deposition Notice.</p> <p>15 And I think what we'll do is try to take the</p> <p>16 shortest ones first to get people out of here.</p> <p>17 How about -- could I just confer with my client</p> <p>18 for just a minute?</p> <p>19 MR. BIGGS: You can. And, if I may. Again,</p> <p>20 Dr. Edmunds is going to have -- he'll probably be a long</p> <p>21 time, but these individuals that are here, they're in for</p> <p>22 the long haul. Everybody else left. We dispatched -- the</p> <p>23 majority of people have gone home. So we just have these</p> <p>24 people remaining, maybe there might be a few relatives and</p> <p>25 such.</p> <p align="right">55</p>
<p>1 MR. BIGGS: I think that's reasonable, and I have</p> <p>2 no qualms about that, Mr. Neary. And we're outside right</p> <p>3 now getting things organized and streamlined to do that, to</p> <p>4 accomplish that.</p> <p>5 Okay. Off the record?</p> <p>6 MR. HERB: Off the record.</p> <p>7 MR. BIGGS: Okay.</p> <p>8 (Break taken at 12:27 p.m. until 1:21 p.m.)</p> <p>9</p> <p>10 <u>AFTERNOON SESSION</u></p> <p>11 MR. HERB: Are we ready to go?</p> <p>12 MR. BIGGS: Yes. I have Dr. Edmunds and George</p> <p>13 and Chairperson, I'll bring them in.</p> <p>14 Two ladies had to leave. Because of the Head</p> <p>15 Start School, they had to be there at 2:30 to do something.</p> <p>16 We may want to talk to them later.</p> <p>17 But I think that we'll be okay and we'll have --</p> <p>18 get started with Dr. Edmunds. I think you'll find your</p> <p>19 deposition will be very informative.</p> <p>20 MR. NEARY: Well, you were -- as I understand, our</p> <p>21 agreement was you were going to designate the people who</p> <p>22 were going to testify.</p> <p>23 MR. BIGGS: We did. Unfortunately, two of the</p> <p>24 ladies had to leave because they run a Head Start School.</p> <p>25 And they were hoping, if they were going to be called, it</p> <p align="right">54</p>	<p>1 But your greatest source of information as to the</p> <p>2 structure is going to come from David, and that's all I</p> <p>3 wanted to say, and then I'll excuse myself.</p> <p>4 MR. HERB: Yeah; just take one minute. I just</p> <p>5 want to talk to my client for a second about this.</p> <p>6 (Break taken at 1:27 p.m. until 1:32 p.m.)</p> <p>7</p> <p>8 ---oOo---</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p align="right">56</p>